

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN L. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Austin, TX

Docket No. 02-1976; Submitted on the Record
Issued January 23, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits.

By decision dated July 16, 2001, the Board affirmed the May 23 and March 24, 1999 decisions of the Office, which terminated appellant's compensation benefits for the accepted condition, a fractured left great toe; found that appellant had not sustained a recurrence of disability on and after December 10, 1998 causally related to his August 23, 1998 employment injury; and that the Office had properly denied appellant's request for a hearing.¹ The facts and the history of the case as set forth in the July 16, 2001 decision are incorporated herein.²

On August 20, 2001 the Office received appellant's request for reconsideration of its previous decisions. Argument and evidence was submitted. By decision dated November 1, 2001, the Office denied appellant's request for review on the grounds that the evidence submitted with the request was of a cumulative nature.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's claim for further review.

¹ Docket Nos. 99-1892, 99-2382 and 00-120.

² The Board notes that appellant has currently pending appeals in Docket Nos. 01-1372 and 01-1607 which pertain to issues different than the current appeal.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

Appellant's arguments and the evidence submitted in this case are duplicative and repetitive of evidence previously submitted. Thus the evidence does not constitute a basis for reopening the case. In its decision of July 16, 2001, the Board noted that appellant's current description of his injury was exaggerated beyond the initial reported description of August 29, 1998, for which he underwent appropriate medical treatment. In his request for reconsideration of the Office's decision terminating compensation benefits and denying his recurrence claim, appellant essentially argues that the forklift injury of August 23, 1998 caused injuries to various parts of his body, other than what the Office accepted. He submitted medical evidence which, although new, is not relevant because the physicians recite the history of injury provided by appellant which the Board previously found to be "exaggerated."⁷ Accordingly, such evidence is duplicative and repetitive and does not constitute a basis for reopening the case.

The Board finds that appellant did not meet any of the requirements under section 10.606(b)(2) and therefore the Office properly denied the request for reconsideration without merit review of the claim.

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

⁷ Appellant submitted chart notes dated April 3 to June 29, 2000 from Dr. Drazner; a September 17, 1999 medical report from Dr. Morris; an April 9, 2000 report from Dr. Hamilton; an August 31, 2000 prescription for a prosthesis from Dr. Howlett along with reports dated July 15, 1999 through September 29, 2000. A copy of a September 1, 1999 nerve conduction and electromyogram study was provided along with physical therapy reports and a copy of a January 27, 1999 acknowledgment that a notice of recurrence had been filed.

The November 1, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 23, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member